

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-104689-11  
Date:  
June 13, 2011

Re:

### Legend

Date 1                    =  
Taxpayer                =  
Trust                    =

Date 2                    =  
x                         =  
Company                =  
Attorney 1              =  
Attorney 2              =  
Accountant              =  
Year                     =

Dear                    :

This letter responds to the letter dated January 19, 2011 and subsequent correspondence, submitted by your authorized representatives, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption with respect to a transfer to Trust.

### FACTS

On Date 1, Taxpayer created Trust, an irrevocable trust, for the benefit of her son and his descendants. Attorney 1 drafted the Trust agreement. On Date 2, Taxpayer transferred x shares of stock in Company to Trust.

Taxpayer engaged Attorney 2 to prepare the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the Date 2 transfer to Trust. Attorney 2 prepared the Form 709, but did not include page 4 of the Form 709, which reports the allocation of the GST exemption. Taxpayer timely filed the Form 709.

In Year, Accountant discovered that page 4 was missing from the Form 709. Accordingly, Accountant did not allocate Taxpayer's available GST exemption to the Date 2 transfer to Trust. Attorney 2 is deceased. In an affidavit, Attorney 1 states that Trust was intended to be a GST trust and that he advised Taxpayer to allocate her GST exemption to Trust. In an affidavit, Taxpayer states that she relied upon Attorney 2's expertise in preparing the Form 709.

The following rulings are requested: (1) an extension of time pursuant to § 2642(g), § 301.9100-1, and § 301.9100-3 to make an allocation of Taxpayer's GST exemption to the Date 2 transfer to Trust; (2) the allocation will be effective as of the date of the gift to Trust; and (3) the gift tax value of the transfer to Trust will be used in determining the inclusion ratio with respect to the trust.

### LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a "skip person." A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), in effect for the Date 2 transfer, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed. Section 26.2642-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio under § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to allocate Taxpayer's available GST exemption to the Date 2 transfer to Trust. The allocation will be effective as of the date of the transfer to the trust, and the gift tax value of the transfer to the trust will be used in determining the inclusion ratio with respect to the trust.

The allocation should be made on a Supplemental Form 709 for the appropriate calendar year and filed with the Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Supplemental Form 709.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: 

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Lorraine E. Gardner, Senior Counsel  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes  
Copy of this letter